

FBI Breaks It, FBI Buys It: Will SCOTUS Finally Make Sure the Feds Pick Up the Tab When They Raid the Wrong House?

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Should victims of erroneous Special Weapons and Tactics (“SWAT”) raids by federal law enforcement be able to obtain money damages from the federal government? Will the availability of such remedy make law enforcement more cautious about its conduct? We may soon have a chance to find out.

Policing has been a hot topic for a long time, with good reason. Despite the fact that officers are sworn to serve and protect the community, the allegations of police misconduct run the gamut, and many high-profile cases fill the news cycle. [EMT Breonna Taylor died under a volley of bullets](#), blindly fired by police while attempting to execute a [“no-knock” warrant](#), which permits law enforcement to enter a building without announcing themselves first by knocking or ringing the doorbell. Some estimates suggest that over [20,000](#) no-knock warrant raids happen annually across the country.

Even under the best of circumstances, and with law enforcement taking the utmost care, the complexities in coordinating large officer teams and other factors make these raids exceedingly dangerous for everyone involved. The reaction of the people in the building matters. In Breonna Taylor’s, like in many other similar cases, [her boyfriend fired a shot at the door thinking burglars were trying to break in](#), which triggered the barrage of bullets. The tools used also can cause issues. In one of many examples, [an Albuquerque SWAT team engaged a suspect in a standoff and deployed](#) a “noise flash diversionary device,” colloquially known as

“flashbang.” It caused a fire, forcing the suspect out of the building, but a teenager who accompanied him died from smoke inhalation. [Police are aware](#) of the many dangers posed by these devices, including that the powder inside can cause fires. The reason for the raid also sets the tone. Without a doubt, the intensity of the situation is different when officers enter a building in search of a specific suspect, like in the Breonna Taylor case, versus when SWAT enters a suspected live hostage situation, a commonly reported issue in those very dangerous “[swatting](#)” “pranks”.

The unfortunate reality is that a raid will get more media coverage if a life is lost. But what about an erroneous raid that results in no casualties? There are still damages to property and potential physical and mental health effects. This is the story of *Martin v. United States*—a case that the Supreme Court [granted certiorari](#) in on January 27, 2025.

Before dawn in 2017, Trina Martin and her partner Toi Cliatt were awakened by a flashbang exploding in their living room and FBI agents rushing inside, guns drawn, screaming questions, and, simultaneously, separating her from her then-7-year-old son Gabe. It wasn’t until Cliatt told the FBI agents the address that they realized they had the wrong house, on the wrong street. Apologized and supervisor business cards followed, along with a promise to cover the damage to the property, but alas, that never happened. Martin eventually filed suit against the United States under the Federal Tort Claims Act (“FTCA”).

Congress passed the FTCA in 1946 with [the explicit purpose of providing a remedy for victims of the tortious acts of federal officers and employees](#) by waiving the sovereign immunity that insulated the United States from such suits. Codified at [28 U.S.C. § 2680\(a\)](#), it includes a prominent and oft-litigated “discretionary function” exception that prevents courts from [second-guessing actions of social, economic, and political nature](#). Often it insulates the Government

from liability for violations of its own, self-imposed safety requirements. As [Professor Gregory Sisk](#) put it, [lower courts consistently find that allegedly “operational” decisions made by law enforcement in the heat of the moment fall within the exception](#). This effectively limits the availability of the remedy to many a tort victim like Martin.

The [Northern District of Georgia granted summary judgment in part](#), finding that the Supremacy Clause prevents states from impeding or burdening the execution of federal law, and the discretionary function exception applies to the raid because the FBI team’s decisions on how to prepare for and execute the warrant were the type of administrative matters Congress meant to insulate. [The 11th Circuit upheld the decision per curiam](#).

The Supreme Court will answer [two questions](#): “1) whether the Constitution’s Supremacy Clause bars claims under the Federal Tort Claims Act when the negligent or wrongful acts of federal employees have some nexus with furthering federal policy and can reasonably be characterized as complying with the full range of federal law, and 2) whether the discretionary-function exception is categorically inapplicable to claims arising under the law enforcement proviso to the intentional torts exception.” Briefs are due in March and April, with oral argument likely to be scheduled sometime in May.

If the [briefing at the cert petition stage](#) is any indication, the Federal Government will argue that the 11th Circuit’s decision was correct, and not at all at odds with those of other circuits—Martin did argue that [there is a circuit split ripe for a resolution](#) at the highest court of the land. Even at that early stage, [Professor Sisk](#) and [Members of Congress](#) filed amicus briefs supporting Martin’s claim. We are likely to see even more amici join now, but Martin’s lawsuit is in good hands anyway. The [Institute for Justice](#) (“IJ”), a nonprofit, public interest law firm known for cutting-edge constitutional litigation is on the case. Just last term, IJ won [Gonzalez v.](#)

[Trevino](#), a case that clarified that subjects of retaliatory arrests may sue the government, and is currently fighting to overturn the infamous [Kelo](#) takings case and [eliminate oppressive occupational licensing requirements](#). IJ's team of dedicated attorneys will fight to ensure that Martin, and other victims of the same abuse, are not left picking up the financial pieces of their lives while the federal government brushes them off.

Hopefully, the Supreme Court will take this opportunity to ensure that when law enforcement victimizes an innocent person, even by mistake, it has to pay its due, just like you and me. Stay tuned.